

CHAPTER 4 CONTESTED CASES

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]

873—4.1(85,85A,85B,86,87,17A) Contested cases. Contested case proceedings before the industrial commissioner are:

- 4.1(1)** Arbitration (Iowa Code section 86.14).
- 4.1(2)** Review of award or settlement (review-reopening, section 86.14).
- 4.1(3)** Benefits under section 85.27.
- 4.1(4)** Death and burial benefits (sections 85.28, 85.29, 85.31).
- 4.1(5)** Determination of dependency (sections 85.42, 85.43, 85.44).
- 4.1(6)** Equitable apportionment (section 85.43).
- 4.1(7)** Second injury fund (section 85.63 et seq.).
- 4.1(8)** Vocational rehabilitation benefits (section 85.70).
- 4.1(9)** Approval of fees under section 86.39.
- 4.1(10)** Commutation (section 85.45 et seq.).
- 4.1(11)** Employee's examination (section 85.39).
- 4.1(12)** Employer's examination or sanctions (section 85.39).
- 4.1(13)** Determination of compliance with chapters 85, 85A, 85B, 86, and 87.
- 4.1(14)** Applications for alternate medical care (section 85.27).
- 4.1(15)** Determination of liability, reimbursement for benefits paid and recovery of interest (section 85.21).
- 4.1(16)** Any other issue determinable upon evidential hearing which is under the jurisdiction of the industrial commissioner.

This rule is intended to implement the provisions of Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule.

873—4.2(86) Separate evidentiary hearing or consolidation of proceedings. In addition to applying the provision of Iowa rule of civil procedure 105, a person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

When any contested case proceeding shall be filed prior to or subsequent to the filing of an arbitration or review-reopening proceeding and is of such a nature that it is an integral part of the arbitration or review-reopening proceeding, it shall be deemed merged with the arbitration or review-reopening proceeding. No appeal to the commissioner of a deputy commissioner's order in such a merged proceeding shall be had separately from the decision in arbitration or review-reopening unless appeal to the commissioner from the arbitration or review-reopening decision would not provide an adequate remedy.

Entitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled, and if pled, discovery shall be limited to matters discoverable in the absence of such pleading unless it is bifurcated. The claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any time before a case is assigned for hearing, in which case discovery on that issue may proceed only after the final decision of the agency on all other issues.

This rule is intended to implement Iowa Code sections 86.13, 86.18 and 86.24.

873—4.3(85,85A,86,87) Compliance proceedings. If the industrial commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the commissioner may on the commissioner's own motion give notice to the person or entity and

schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. Following the hearing the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may order compliance within a specified time and under specified circumstances. The industrial commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division [commerce department] with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the industrial commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

873—4.4(86) Request for hearing. Unless otherwise ordered a hearing shall not be held in proceedings under 4.1(8) to 4.1(12), unless requested in writing by the petitioner in the original notice or petition or by the respondent within ten days following the time allowed by these rules for appearance.

873—4.5(86) Commencement by commissioner. In addition to an aggrieved party, the commissioner may initiate proceedings under 4.1(9). The proceeding may be held before a deputy commissioner or the commissioner. The industrial commissioner shall be the only person to commence a proceeding under 4.1(13), unless such authority is specifically delegated by the industrial commissioner to a deputy commissioner concerning a specific matter.

873—4.6(85,86,17A) Original notice and petition. A petition or application must be delivered or filed with the original notice unless original notice Form 100, Form 100A or Form 100B of the division of industrial services is used.

The original notice Form 100, Form 100A, Form 100B, Form 100C, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 4.1(85,85A,85B,86,87,17A). The Form 100 is to be used for all contested case proceedings except as indicated in this rule. The Form 100A is to be used for the contested case proceedings provided for in subrules 4.1(11) and 4.1(12). The Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). The Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(14) and rule 4.48(17A,85,86). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, the Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory ruling, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

At the same time and in the same manner as service of the original notice and petition the claimant shall serve a patient's waiver using Form 309-5173 (authorization for release of information regarding claimants seeking workers' compensation benefits) which shall not be revoked until conclusion of the contested case.

A separate date of injury shall be alleged and a separate original notice and petition shall be filed on account of each injury, gradual injury, occupational disease or occupational hearing loss alleged by an employee. If more than one injury, gradual injury, occupational disease or occupational hearing loss is included in the same original notice and petition, the industrial commissioner shall enter an order requiring filing of separate original notices and petitions. If a required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 4.36(86). If correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

Claimant shall cooperate with respondents to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

This rule is intended to implement the provisions of Iowa Code sections 85.27, 85.45, 85.48, and 17A.12.

873—4.7(86,17A) Delivery of notice, orders and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 86.36. A proposed or final decision or order may be delivered by the division of industrial services to any party by regular mail.

This rule is intended to implement the provisions of Iowa Code sections 86.36, 17A.3(2), and 17A.12.

873—4.8(86) Filing of notice.

4.8(1) A contested case is commenced by filing the original notice and petition with the industrial commissioner. No action shall be taken by the industrial commissioner on any contested case against an adverse party unless the adverse party has answered or unless it can be shown by proper proof that the adverse party has been properly served. The original notice and petition if required by 4.6(85,86,17A) shall be accompanied by proof that the petitioner has deposited copies of such documents with the U.S. post office for delivery by certified mail, return receipt requested, upon the respondent or has submitted such copies to a proper person for delivery of personal service as in civil actions.

4.8(2) Filing fee.

a. On or after July 1, 1988, for all original notices and petitions for arbitration or review-reopening seeking weekly benefits filed on account of each injury, gradual injury, occupational disease or occupational hearing loss alleged by an employee, a filing fee of \$65 shall be paid at the time of filing. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits under Iowa Code section 85.27; burial benefits, Iowa Code section 85.28; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; second injury fund, Iowa Code sections 85.63 to 85.69; vocational rehabilitation benefits, Iowa Code section 85.70; approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; and determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21. An amendment that is filed on or after July 1, 1988, which alleges an additional injury date will be treated like an original notice and petition. No filing fee is due when an amendment corrects an erroneous injury date.

b. One filing fee of \$65 shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers. If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

c. One filing fee of \$65 shall be required for as many original notices and petitions as are filed on the same day against multiple alleged employers on account of one employee; provided, however, that to qualify for one filing fee all original notices and petitions against all employers must involve an identity of body parts, that is, must all relate to the same scheduled member or members or all relate to the body as a whole or all relate to the same scheduled member or members and body as a whole.

d. If original notices and petitions filed on account of one employee are not filed on the same day, a \$65 filing fee is required for each original notice and petition even though it would have qualified for a shared filing fee if filed on the same day as other original notices and petitions.

e. If the correct filing fee or fees are not paid at the time of filing of the original notice and petition, the industrial commissioner shall enter an order requiring payment of the correct filing fee or fees. If the required correction is not made by a date specified in the order, the original notice and petition shall automatically be dismissed without prejudice without entry of further order. See rule 4.36(86). If

correction is made within the specified time, the initial filing shall be sufficient to have tolled the statute of limitations.

If no filing fee is paid at the time of filing of the original notice and petition, the industrial commissioner shall return the original notice and petition to the party filing it. Filing an original notice and petition without paying the fee shall not toll the statute of limitations. Tendering an amount less than \$65 will be considered failure to pay a filing fee.

f. The filing fee may be taxed as a cost to the losing party in the case. If the filing fee would impose an undue hardship or be unjust in the circumstances for the losing party, the filing fee may be taxed as costs to the winning party in the case. If an original notice and petition is erroneously accepted for filing without payment of the correct filing fee or fees, any unpaid fees may be taxed as costs. See rule 4.33(86).

g. The filing fee shall be paid at the same time the petition is filed. Checks should be made payable to the "Iowa Division of Industrial Services." If the payment of the filing fee is made by an insufficient funds check or a check on which payment is stopped or a check on which payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2) "e." One check may be submitted for payment of more than one filing fee if more than one filing fee is due from a petitioner for cases filed on account of an employee. Separate checks must be submitted for each petitioner's case or cases.

h. The industrial commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the industrial commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the industrial commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the industrial commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2) "e."

i. Rescinded IAB 1/29/97, effective 3/5/97.

This rule is intended to implement Iowa Code section 17A.12.

873—4.9(17A) Appearance and responses, pleading and motions. Responses to pleadings and motions shall be made as follows:

4.9(1) Respondent—appearance. A respondent shall appear within 20 days after the service of the original notice and petition upon such respondent.

4.9(2) Motions. Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required, upon motion made by a party within 20 days after the service of the pleading on such party.

4.9(3) Pleading. Answer to a petition must be served on or before the appearance date prescribed in accordance with 4.9(1).

4.9(4) Time after motions attacking pleadings and special appearances. If a motion attacking a pleading is so disposed of as to require further pleading, such further pleading shall be served within ten days after notice of the action of the industrial commissioner or deputy industrial commissioner. If the further pleading requires a response, the response shall be filed within ten days after service of the further pleading.

4.9(5) Amendments to pleadings. A party may amend a pleading as a matter of course at any time before the party's discovery is closed, or if no order is entered closing the party's discovery, at any time before the case is assigned for hearing. Otherwise, a party may amend a pleading only by leave of the industrial commissioner or deputy industrial commissioner or by written consent of the adverse party. Leave to amend, including leave to amend to conform to proof, shall be freely given when justice so requires.

4.9(6) Form, submission and ruling on motions and special appearances. All motions, including motions for summary judgment and applications for adjudication of law points, and special appearances,

shall have appended thereto a concise memorandum brief and argument and shall be deemed submitted without hearing on the record presented on the tenth day following filing. Resistances to motions and special appearances shall have appended thereto a concise memorandum brief and argument, and shall be filed on or before the date of submission of the motion or special appearance. Briefs and arguments are waived unless appended to the motion, special appearance or resistance.

An order may be entered consolidating any motion or special appearance for ruling with hearing of the contested case. Any party desiring a ruling on a motion or special appearance prior to hearing may concisely set forth the necessity of prior ruling in the motion, special appearance or resistance. If a special appearance is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the industrial commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) Consolidation. Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion shall be deemed approved if no resistance to the motion is filed with the industrial commissioner within ten days of the filing of the motion. No order granting the motion will be filed by the industrial commissioner. As an alternative, the parties may make an oral motion to consolidate common questions of fact or law at the time of the pretrial hearing. A ruling on the motion will be included with the order issued from the pretrial hearing.

4.9(8) Withdrawal of counsel. Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the industrial commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by delivering written objections and a request for a hearing to the Division of Industrial Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, within ten days following the date the notice was mailed or personally delivered to the client. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the industrial commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the industrial commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

This rule is intended to implement the provisions of Iowa Code section 17A.12.

873—4.10(86,87) Insurance carrier as a party. Whenever any insurance carrier shall issue a policy with a clause in substance providing that jurisdiction of the employer is jurisdiction of the insurance carrier, the insurance carrier shall be deemed a party in any action against the insured.

This rule is intended to implement Iowa Code section 87.10.

873—4.11(86) Signatures on documents and papers. All documents and papers required by these rules, the Iowa rules of civil procedure as applicable, or a statutory provision shall be signed by the party if unrepresented or the party's attorney if represented. The party's signature in addition to the attorney's signature shall be necessary only when otherwise required by these rules, the Iowa rules of civil procedure as applicable, and any statutory provision.

This rule is intended to implement Iowa Code section 17A.12.

873—4.12(86) Service on parties. Any document or paper not delivered under 4.6(85,86,17A) and 4.7(86,17A) which is to be filed, or which seeks relief from or action of or against another party, or which makes argument, or which has any significant effect on any contested case, shall be served on each party of record under 4.13(86).

873—4.13(86) Method of service. Except as provided in 4.6(85,86,17A) and 4.7(86,17A), service of all documents and papers to be served according to 4.12(86) and 4.18(85,86,17A) or otherwise upon a

party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the industrial commissioner. Service upon the attorney or party shall be made by delivery of a copy to or mailing a copy to the last-known address of the attorney or party, or if no address is known, by filing it with the division of industrial services. Delivery of a copy within this rule means: Handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. No documents or papers referred to in this rule shall be served by the industrial commissioner.

873—4.14(86) Filing of documents and papers. All documents and papers required to be served on a party under rule 4.12(86) shall be filed with the industrial commissioner either before service or within a reasonable time thereafter. However, unless otherwise ordered by the industrial commissioner or deputy industrial commissioner, no deposition, notice of deposition, notice of service of interrogatories, interrogatories, request for production of documents, request for admission, notice of medical records and reports required to be served by 4.17(86), and answers and responses thereto shall be filed with or accepted for filing by the industrial commissioner unless its use becomes otherwise necessary in the action, in which case it shall be attached to the motion or response to motion requiring its use, or unless offered as evidence at hearing of the contested case.

This rule is intended to implement Iowa Code section 86.18.

873—4.15(86) Proof of service. Proof of service of all documents and papers to be served on another party under 4.12(86) shall be filed with the division of industrial services promptly, and in any event, before action is to be taken thereon by the industrial commissioner or any party unless a responsive pleading has been filed. The proof shall show the date and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the industrial commissioner.

873—4.16(86) Request for copy. No person requesting a mailed file-stamped copy of a filing made in a contested case shall receive such a copy unless the request shall be accompanied by a self-addressed envelope with sufficient postage. In addition, no party requesting a file-stamped copy of a filing made by the party in a contested case shall receive such a copy unless the request shall be accompanied by sufficient copies to allow the requesting party to receive a copy.

873—4.17(85,86,17A) Service of medical records and reports. Each party to a contested case shall serve all medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than 20 days following filing of an answer, or if not then in possession of a party, within 10 days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions are medical doctors, osteopaths, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution and date of the records and reports, and if served later than 20 days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to 4.14(86), the notice and records and reports shall not be filed with the industrial commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of 4.36(86). This rule does not require a party to serve any medical record or report that was previously served by another party in a contested case proceeding.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

873—4.18(85,86,17A) Medical evidence and discovery. Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order for service of the records and reports shall be admissible as evidence at hearing of the contested case unless otherwise provided by rule. Any party against which a medical record or report may be used shall have the right, at the party's own initial expense, to cross-examine by deposition the medical practitioner producing the record or report and the deposition shall be admissible as evidence in the contested case.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

873—4.19(86) Prehearing calendar. The industrial commissioner may provide for a calendar for prehearing procedures which may extend to all contested cases or be limited to any type or class of such cases as may be prescribed.

873—4.20(86) Prehearing procedure. A deputy commissioner or the industrial commissioner may order parties in the case to either appear before the commissioner or a deputy commissioner for a conference, or communicate with the commissioner or the commissioner's designee and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

4.20(1) The necessity or desirability of amending pleadings by formal amendment or prehearing order;

4.20(2) Agreeing to admissions of facts, documents or records not really controverted, to avoid unnecessary proof;

4.20(3) Limiting the number of witnesses;

4.20(4) Settling any facts of which the commissioner or deputy commissioner is to be asked to take official notice;

4.20(5) Stating and simplifying the factual and legal issues to be determined;

4.20(6) Specifying the items and amounts of compensation claimed;

4.20(7) Specifying all proposed exhibits and proof thereof;

4.20(8) Consolidation, separation for hearing, and determination of points of law;

4.20(9) Specifying all witnesses expected to testify;

4.20(10) Possibility of settlement;

4.20(11) Filing of advance briefs, if any;

4.20(12) Setting or altering dates for completion of discovery or completion of medical evidence by each party;

4.20(13) Any other matter which may facilitate, expedite, or simplify any contested case.

This rule is intended to implement Iowa Code sections 86.17 and 86.18.

873—4.21(86) Prehearing conference record. At the request of any attorney in the case, or at the discretion of a deputy commissioner or the industrial commissioner, the entire prehearing conference or any designated part thereof shall be recorded and the cost of the reporter shall be assessed to the requesting party, or if directed by the commissioner or deputy commissioner, assessed as costs.

873—4.22(86) Orders. The deputy commissioner or industrial commissioner may enter an order reciting any action taken at the conference or pursuant to any other procedures prescribed which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

873—4.23(86) Assignment for hearing. Contested cases shall be set for hearing within the discretion of the industrial commissioner as soon as practicable after the parties have had adequate opportunity to prepare for hearing. A party may request in writing that no hearing in a contested case be held until such time as specified matters have been accomplished or specified events have occurred. Continuances of hearings in contested cases shall be granted only by the industrial commissioner or the commissioner's designee. Requests for continuance shall state in detail the reasons for the request and whether the opposing party accedes to the request. The industrial commissioner or the commissioner's designee shall enter an order granting or denying the request.

Defendants shall promptly notify the industrial commissioner of settlements.

This rule is intended to implement Iowa Code sections 17A.3(1) “b,” 86.8 and 86.18.

873—4.24(17A,86) Rehearing. Any party may file an application for rehearing of a proposed decision in any contested case by a deputy commissioner or a decision in any contested case by the industrial commissioner within 20 days after the issuance of the decision. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. An application for rehearing shall be deemed denied unless the deputy commissioner or industrial commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

873—4.25(17A,86) Appeal when rehearing requested. An appeal to or review on motion of the industrial commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy industrial commissioner under 4.24(17A,86) has been denied or deemed denied. If the application for rehearing is granted, the appeal shall be filed within 20 days of the decision on rehearing. If no application for rehearing under 4.24(17A,86) is filed, appeal shall be as provided in 4.27(17A,86).

This rule is intended to implement Iowa Code Sections 17A.15 and 86.24.

873—4.26 Rescinded, effective July 1, 1977.

873—4.27(17A,86) Appeal. Except as provided in 4.2(86) and 4.25(17A,86), an appeal to the commissioner from a decision, order or ruling of a deputy commissioner in contested case proceedings shall be commenced within 20 days of the filing of the decision, order or ruling by filing a notice of appeal with the industrial commissioner. The date the notice of appeal is filed shall be the date the notice of appeal is received by the agency. *Miller v. Civil Constructors*, 373 N.W.2d 115 (Iowa 1985). The notice shall be served on the opposing parties as provided in 4.13(86). An appeal under this section shall be heard in Polk county or in any location designated by the industrial commissioner.

No appeal shall be separately taken under this or 4.25(17A,86) from an interlocutory decision, order or ruling of a deputy industrial commissioner. A decision, order or ruling is interlocutory if it does not dispose of the contested case, unless the sole issue remaining for determination is claimant’s entitlement to additional compensation for unreasonable denial or delay of payment pursuant to Iowa Code section 86.13.

A cross-appeal may be taken under this or 4.25(17A,86) in the same manner as an appeal within the 20 days for the taking of an appeal or within 10 days after filing of the appeal, whichever is later.

This rule is intended to implement Iowa Code sections 17A.15 and 86.24.

873—4.28(17A,86) Scope of appeal. The commissioner shall decide an appeal upon the record submitted to the deputy industrial commissioner unless the commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced at the hearing. A request for the taking of additional evidence must be filed with the industrial commissioner within 20 days of the filing of the appeal. Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) Time for serving briefs. Appellant shall serve its brief within 50 days after the date on which notice of appeal was filed, or within 20 days after filing of the hearing transcript, whichever date is later. Appellee shall serve its brief within 20 days after service of the brief of appellant. If appellant serves a reply brief, it shall be done within 10 days after service of appellee’s brief.

4.28(2) Cross-appeals. In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant’s reply brief. When both parties appeal, the first to

serve notice of appeal shall be appellant unless both serve their notice on the same date, in which case the claimant shall be appellant.

4.28(3) *Multiple adverse parties.* In cases involving multiple appeals involving multiple claimants, employers, insurance carriers or the second injury fund, the industrial commissioner shall enter an order establishing a briefing schedule.

4.28(4) *Form of briefs.* Respective briefs and exceptions on appeal shall include the following:

- a. Statement of the case.
- b. Statement of the issues on appeal.
- c. An argument corresponding to the separately stated issues and contentions of appellant with respect to the issues presented and reasons for them, with specific reference to the page or pages of the transcript which are material to the issues on appeal.
- d. A short conclusion stating the precise relief sought.

The appellee shall submit a brief on appeal replying to the issues presented by the appellant, unless a cross-appeal is made in which case the brief of appellee shall contain the issues and argument involved in the cross-appeal as well as the response to the brief of appellant. The appeal shall be decided on the issues presented by the appellant and appellee, including those matters raised by way of cross-appeal except as provided in 4.29(86,17A).

The failure of the appellant or appellee to conform to this rule may result in sanctions as provided in 4.36(86).

4.28(5) *Length of briefs.* See rule 4.45(17A,86).

This rule is intended to implement Iowa Code section 86.24.

873—4.29(86,17A) Review of motion. Except as provided in 4.25(17A,86) the commissioner may review the decision, order or ruling of a deputy commissioner in any contested case upon the commissioner's own motion. Except as provided in 4.25(17A,86), the motion to review a decision, order or ruling in all contested cases must be filed within 20 days of the filing of the decision, order or ruling. The commissioner shall specify in a notice mailed to the parties by certified mail, return receipt requested, on the date of filing of the motion the issues to be reviewed and the additional evidence, if any, to be obtained by the parties. The hearing under this section shall be heard in Polk county or in any locality designated by the industrial commissioner.

This rule is intended to implement Iowa Code sections 17A.12, 17A.15 and 86.24.

873—4.30(86,17A) Transcript on appeal or review. When an appeal to or review on motion of the commissioner is taken pursuant to 4.27(86,17A) or 4.29(86,17A), a transcript of the proceedings before the industrial commissioner shall be filed with the industrial commissioner within 30 days after the notice of the appeal is filed with the industrial commissioner. The appealing party shall bear the initial cost of transcription on appeal and shall pay the certified shorthand reporter or service for the transcript. In the event there is a cross-appeal, the appellant and cross-appellant shall share the cost of the transcript. In the event the cost of the transcript has been initially borne by a nonappealing party prior to appeal, the appealing party or parties within 30 days after notice of appeal or cross-appeal shall reimburse the cost of the transcript to the nonappealing party and if not so reimbursed the appeal shall be dismissed.

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.19, 86.24 and 86.40.

873—4.31(86) Completion of contested case record. No evidence shall be taken after the hearing.

This rule is intended to implement Iowa Code section 86.18.

873—4.32(86,17A) Recording of proceedings. The industrial commissioner may arrange for the attendance of a certified shorthand reporter or mechanical means to record proceedings in contested cases. The industrial commissioner may require the defendant employer or on appeal to the commissioner, the appellant, to arrange for the attendance of a certified shorthand reporter or adequate mechanical means of recording the proceedings. The charges for attendance shall be paid initially to the certified shorthand reporter or service by the employer or on an appeal to the commissioner,

the appellant. The charges shall be taxed as costs. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost.

This rule is intended to implement Iowa Code section 86.19.

873—4.33(86) Costs. Costs taxed by the industrial commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the industrial commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or industrial commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery.

This rule is intended to implement Iowa Code section 86.40.

873—4.34(86) Dismissal for lack of prosecution. It is the declared policy that in the exercise of reasonable diligence, all contested cases before the industrial commissioner, except under unusual circumstances, shall be brought to issue and heard at the earliest possible time. To accomplish such purpose the industrial commissioner may take the following action:

4.34(1) Any contested case, where the original notice and petition is on file in excess of two years, may be subject to dismissal after the notice in 4.34(2) is sent to all parties and after the time as provided for in the notice.

4.34(2) After the circumstances provided in 4.34(1) occur, all parties to the action, or their attorneys, shall be sent notice from the division of industrial services by certified mail containing the following:

- a. The names of the parties;
- b. The date or dates of injury involved in the contested case or appeal proceeding;
- c. Counsel appearing;
- d. Date of filing of the petition or appeal;
- e. That the contested case proceeding will be dismissed without prejudice on the thirtieth day following the date of the notice unless good cause is shown why the contested case proceeding should not be dismissed.

4.34(3) The action or actions dismissed may at the discretion of the industrial commissioner and shall upon a showing that such dismissal was the result of oversight, mistake or other reasonable cause, be reinstated. Applications for such reinstatement, setting forth the grounds, shall be filed within three months from the date of dismissal.

This rule is intended to implement Iowa Code sections 86.8, 17A.3(1) "b" and 86.18 and 1986 Iowa Acts, Senate File 2175.

873—4.35(86) Rules of civil procedure. The rules of civil procedure shall govern the contested case proceedings before the industrial commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A, or obviously inapplicable to the industrial commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall

govern. Where appropriate, reference to the word “court” shall be deemed reference to the “industrial commissioner.”

This rule is intended to implement Iowa Code sections 17A.1, 17A.12, 17A.13, 17A.14, and 86.8.

873—4.36(86) Compliance with order or rules. If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy commissioner or the industrial commissioner, the deputy commissioner or industrial commissioner may dismiss the action. Such dismissal shall be without prejudice. The deputy commissioner or industrial commissioner may enter an order closing the record to further activity or evidence by any party for failure to comply with these rules or an order of a deputy commissioner or the industrial commissioner.

This rule is intended to implement the provisions of Iowa Code section 86.8.

873—4.37(86,17A) Waiver of contested case provisions. The parties who wish to waive the contested case provisions of chapter 17A shall file a written stipulation of such waiver with the industrial commissioner before such waiver shall be recognized. The waiver shall specify the provisions waived such as a consent to delivery, waiver of original notice, or waiver of hearing.

873—4.38(17A) Self-disqualification. Any individuals presiding over contested cases before the industrial commissioner shall disqualify themselves from conducting a hearing on the merits or deciding any contested case in which such individual has substantial prior contact or interest or is so related to or connected with any party or attorney thereto so as to give, in the opinion of the person presiding, even the appearance of impropriety for such individual to conduct such hearing or decide such case.

This rule is intended to implement Iowa Code section 17A.17.

873—4.39(17A,86) Filing by facsimile transmission (fax). All documents filed with the agency pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency. The agency will not provide a mailed file-stamped copy of documents filed by fax.

873—4.40(73GA,ch1261) Dispute resolution. The industrial commissioner or the industrial commissioner’s designee (hereinafter collectively referred to as the industrial commissioner) shall have all power reasonable and necessary to resolve contested cases filed under Chapter 4 of these rules. This power includes, but is not limited to, the following: the power to resolve matters pursuant to initiation of mandatory dispute resolution proceedings by the industrial commissioner; the power to resolve matters pursuant to a request by the parties; the power to impose sanctions; and the power to require conduct by the parties. However, no issue in a contested case may be finally resolved under this rule without consent of the parties.

An employee of the division of industrial services who has been involved in dispute resolution shall not be a witness in any contested case proceeding under this chapter.

4.40(1) Mandatory proceedings. The industrial commissioner may require that the parties participate in dispute resolution in the following situation:

- a. The oldest one-fourth of contested cases which are not scheduled for hearing.
- b. All cases where discovery deadlines have been set pursuant to a prehearing order and the deadlines have passed.
- c. All cases where the principal dispute is medical benefits.
- d. All cases where the only dispute is the extent of disability.
- e. All cases involving liability disputes of alleged workers’ compensation insurance carriers and alleged employers pursuant to Iowa Code section 85.21.
- f. Equitable apportionment of compensation payments pursuant to Iowa Code section 85.43.

g. All cases where the industrial commissioner determines that dispute resolution would be in the best interest of the parties.

4.40(2) Voluntary proceedings. The parties may voluntarily agree to submit to dispute resolution.

4.40(3) The parties must comply with the good faith requirements of rule 873—10.1(17A,85,86) before requesting a voluntary proceeding pursuant to subrule 4.40(2).

4.40(4) See 873—subrule 10.1(5) regarding informal dispute resolution.

4.40(5) Rescinded IAB 9/14/94, effective 10/19/94.

This rule is intended to implement 1990 Iowa Acts, chapter 1261, section 3.

873—4.41(17A,86) Evidence. Rescinded IAB 1/29/97, effective 3/5/97.

873—4.42(17A,86) Binding arbitration. Rescinded IAB 1/29/97, effective 3/5/97.

873—4.43(17A,85,86) Summary trial. Rescinded IAB 9/14/94, effective 10/19/94.

873—4.44(17A,85,85A,85B,86,87) Expedited proceeding—criteria. Rescinded IAB 1/29/97, effective 3/5/97.

873—4.45(17A,86) Length of briefs. Except by permission of the presiding deputy industrial commissioner or by permission of the industrial commissioner when an appeal pursuant to rule 4.27(17A,86) has been filed, principal briefs shall not exceed 50 Arabic-numbered pages. Reply briefs shall not exceed 25 Arabic-numbered pages. Permission may be granted ex parte. In the event of a cross-appeal, appellant's (cross-appellee's) responsive reply brief shall be considered a principal brief. The type used shall not be smaller than pica type and each line shall contain an average of no more than 60 characters. If a brief is submitted in excess of the length allowed in this rule, the portion exceeding the allowable length will not be considered. This rule does not prohibit a presiding deputy industrial commissioner or the industrial commissioner from limiting the length of a brief. An exception to this rule is the length of briefs (three pages) in an application for alternate care. See subrule 4.48(11).

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.

873—4.46(17A,85,86) Contested case proceedings—health service disputes.

4.46(1) See rule 873—10.3(17A,85,86) for informal resolution procedures and definitions. The following definition also applies to this rule:

"Petitioning party" means the person who requests or initiates a contested case proceeding.

4.46(2) If utilization of the procedures given in rule 873—10.3(17A,85,86) does not resolve the dispute and the parties have complied with the good faith requirements of rule 873—10.1(17A,85,86), a contested case may be initiated. The procedures given in rule 873—10.3 (17A,85,86) must be used prior to initiation of a contested case. The provider or the responsible party that is unwilling to accept the determination of the person making a determination after reviewing the dispute as provided in rule 873—10.3(17A,85,86) shall initiate the contested case proceeding. The proceeding shall be initiated as provided in this chapter and Iowa Code chapter 17A and shall follow the provisions of this rule. The proceeding must be initiated within 30 days of the date of the determination made pursuant to rule 873—10.3(17A,85,86). If a contested case proceeding is not initiated or is not initiated within the time provided in this rule, the allowed amount of the charge by the provider shall be the amount determined pursuant to rule 873—10.3(17A,85,86).

4.46(3) The evidence submitted in the contested case proceeding shall be limited to the evidence submitted pursuant to rule 873—10.3(17A,85,86) and a copy of the determination made pursuant to rule 873—10.3(17A,85,86). This evidence shall be filed by the party requesting the contested case proceeding at the time the contested case proceeding is initiated. However, the industrial commissioner may request that additional evidence be submitted or may grant submission of additional evidence if the commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced pursuant to rule 873—10.3(17A,85,86).

The issues of the contested case proceeding shall be limited to the dispute considered in rule 873—10.3(17A,85,86).

4.46(4) The petitioning party has the burden of proof.

4.46(5) If the petitioning party wishes to file a brief, it must be filed with the request for contested case proceeding.

4.46(6) The opposing party must file a response within 30 days of the date of service of the request for contested case proceeding.

4.46(7) If the opposing party wishes to file a brief, it must be filed with the response.

4.46(8) Sixty days after the request for contested case is filed with the industrial commissioner, the industrial commissioner will review the matter. The notice of the review to the parties shall be the provisions of this rule and no other notice will be given.

4.46(9) The industrial commissioner shall review the matter and make a decision as soon as practicable after the review. The decision shall be as provided in this chapter and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 17A.14, 85.27, 86.8 and 86.39.

873—4.47(17A,85,86) Second injury fund benefits contested cases. Rescinded IAB 6/22/94, effective 7/1/94.

873—4.48(17A,85,86) Application for alternate care.

4.48(1) *Effective date.* This rule is effective for applications for alternate care received on or after July 1, 1992.

4.48(2) *Purpose.* The purpose of this rule is to establish the procedures for issuing decisions on applications for alternate care within the time provided in Iowa Code section 85.27.

4.48(3) *Definitions.* The following definitions apply to this rule:

“Application for alternate care,” hereinafter referred to as “application,” shall mean a contested case proceeding filed with the industrial commissioner which requests alternate care pursuant to Iowa Code section 85.27.

“Employer” means the person who is liable for payment of medical services provided pursuant to the Iowa workers’ compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers’ compensation insurance.

“Proper application” means an application for alternate care that complies with the requirements of this rule.

4.48(4) *Dissatisfaction—basis.* Prior to filing the application the employee must communicate the basis of dissatisfaction of the care to the employer.

4.48(5) *Application.* The application shall: be filed on the form provided by the industrial commissioner; concern only the issue of alternate care; state the reasons for the employee’s dissatisfaction with the care chosen by the employer; be served on the employer; contain proof of service on the employer; and specify whether a telephone or in-person hearing is requested.

4.48(6) *Fee.* No filing fee is due. See 4.8(2)“a.”

4.48(7) *Employer liability.* Application cannot be filed under this rule if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. (Petitions for alternate care where liability of the employer is an issue should be filed pursuant to rule 4.1(85,85A,85B,86,87,17A).)

4.48(8) *Notice of hearing.* The industrial commissioner will notify the parties by ordinary mail or by facsimile transmission (fax) of the time, place and nature of hearing. No notice will be made until a proper application is received by the industrial commissioner. The notice will specify whether the hearing will be by telephone or in person.

4.48(9) *Discovery and evidence.* All discovery must be completed prior to the contested case hearing. See subrule 4.48(10) on motions on discovery matters. Any written evidence to be used by the

employer or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of the hearing. Written evidence shall be limited to ten pages per party.

4.48(10) Motions. All motions except as provided in this subrule will be considered at the hearing. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The industrial commissioner will make no rulings on discovery matters or motions.

4.48(11) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to three pages.

4.48(12) Hearing. The hearing will be held either by telephone or in person in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code subsection 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the industrial commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the industrial commissioner for resolution. Any transcription charges incurred by the industrial commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code subsection 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.48(14) Decision. A decision will be issued within 10 working days of receipt of a proper application when a telephone hearing is held or within 14 working days of receipt of a proper application when an in-person hearing is held.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.

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